

This letter sets out the guidelines concerning different types of retailers in order to determine whether the retailer should collect Illinois Use Tax. See, 86 Ill. Adm. Code 150.201. (This is a GIL.)

November 29, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated August 6, 1998. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I previously have sent letters to you regarding certain direct sales clients BUSINESS represents in connection with the execution of agency agreements. In this particular instance, BUSINESS represents a corporation (the 'Company'), whose corporate headquarters is located outside the State of Illinois (the 'State'), which intends to sell its products to independent contractors in the State via direct sales format. These independent contractors (the 'Distributors') will sell the products to the ultimate consumer in the State. Distributors, in turn, will receive the difference between the wholesale price and the retail price from those sales. In order to relieve the Distributors of the burden of complying with sales and use tax collection and to ensure collection and remittance to the State, the Company would like to enter into an Agency Agreement with the State. This Company is very similar to other direct sales companies which have previously entered into Agency Agreements with the State.

However, the Company also has an existing mail order division, which sells its products via direct mail catalogs. Since the mail order division has no nexus with the State, it currently does not collect and remit sales and use tax based upon the sales made by direct mail. While the Company would like to collect and remit sales tax on sales made by its Distributors, once it has Distributors in the State, it does not wish to begin to collect and remit sales tax on its direct mail sales.

Would you please inform me if it is possible for the Company to enter into an Agency Agreement whereby it can collect sales and use tax based upon sales made by its Distributors, but would not be liable for and would not be required to collect sales and use tax on sales made by its mail order division? The Company wishes to continue to operate the mail order division as currently operated.

I look forward to talking to you with respect to this matter.

AGENCY AGREEMENTS

Retailers of tangible personal property in Illinois incur Retailers' Occupation Tax (sales tax) on their gross receipts of sales, including any local tax imposed by the jurisdiction where the sale takes place. Each retailer is required to register and file returns with the Department. However, the Department has recognized that this may be a great burden on some specific types of retailers.

Upon acceptance by the Department, a manufacturer, importer, or wholesaler whose products are sold at retail in Illinois by numerous retailers, and who specifically request to do so, may assume the responsibility for accounting and paying to the Department all sales tax resulting from such sales. See the enclosed copy of 86 Ill. Adm. Code 130.550. Please note that such arrangement must be accepted by the Department and is subject to any written objections of the retailers that would be affected.

NEXUS

In the context of a General Information Letter we cannot make a binding determination on whether a business has a responsibility to collect Illinois Retailers' Occupation or Use Taxes. We will, however, provide the following general information for your consideration.

A "company" that enters into an agency agreement with a retailer or retailers that are selling that company's products in Illinois will generally not be considered to have nexus with Illinois by reason of that agency agreement alone. So long as an out-of-state company is simply acting as a supplier of Illinois retailers who, in turn, sell to Illinois consumers on their own behalf, the out-of-state company cannot be required to act as an out-of-state use tax collector. Again, we do not think the fact that the out-of-state company enters into an agency agreement which authorizes it to pay the Retailers' Occupation Tax incurred by the Illinois retailers changes that. However, that would not be true if, for example, the Illinois retailers were divisions of the out of state company or were authorized to solicit orders on behalf of the out-of-state company or to act as representatives of the out-of-state company in any other capacity.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.